IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J. CHELAMESWAR

AND

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 14697 of 2004

Between:

V.V. Chalapathi, PC.No.2413 of Kurnool

District, s/o V.V. Ramana, aged about 32 yrs,

Occ: Police Constable, now working at

Nandivargam Paid Secretaries., Panyam Circle,

Kurnool District (under orders of suspension)

..... PETITIONER

AND

1. The Deputy Inspector General of Police,

Kurnool Range, Kurnool.

2. The Inquiring Authority/Sub Divisional Police

Officer, Done, Kurnool District.

3. The Presenting Officer/Inspector of Police,

Done, Kurnool District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction, calling for the records pertaining to O.A. No. 674 of 2004 dt 4.8.2004 on the file of the Hon'ble A.P. Administration Tribunal, Hyderabad and quash the same as illegal, arbitrary, unjust and unconstitutional and declare the same as void *ab initio*, null and void and *nonest* in the eye of law and consequently stay the inquiry and all further proceedings initiated by the respondents 1 to 3 in pursuance of the Memorandum of Charge in Proceedings Panchayat Raj No. 18/2003-C.No.C2/104/2003, dt 5.8.2003 issued by the 1st respondent till the inquiry and trial in respect of criminal case registered against the petitioner in Crime No. 26 of 2003 by the Railway Police Station, Kurnool, is concluded.

For the Petitioner: Mr. T. Suryakaran Reddy, Advocate

For the Respondents : Government Pleader for Services-I & Government Pleader for Home.

The Court Made the Following :

:: ORDER::

(Per Hon'ble Sri Justice G. Raghuram)

The 1st respondent herein issued a charge memo dated 5.8.2003 alleging gross misconduct, dereliction of duty and indulging criminal activities unbecoming of a member of the disciplined force like the Police Department and thus contravening of Rules 3(1) and 3(2) of the APCS (Conduct) Rules 1964, against the petitioner. Assailing the initiation of departmental proceedings, the petitioner filed OA No. 674 of 2004 before the A.P. Administration Tribunal. By the judgment dated 4.8.2004 the Tribunal rejected the application dismissing the OA. Hence the writ petition.

The petitioner, a member of the State Police establishment, was on deputation posted as a Police Constable to the Kurnool Railway Police Station from 4.10.2000 to 31.7.2002. He was thereafter repatriated to the parent establishment and posted to Nandivargam PS, Panyam Circle, Kurnool District. While so, by proceedings of the 1st respondent dated 23.6.2003 he was placed under suspension

pending enquiry on allegation that while working in the Kurnool RPS, he conspired with the then S.I. of Police and prepared a forged inquest report to enable the members of the family of P. Marenna to fraudulently claim Rs.4 lakhs for the death of Marenna in an accident on the Kurnool Railway platform on 25.4.2001.

In respect of the same event, Crime No. 26 of 2003 was registered on 5.5.2003 by the Kurnool RPS against the petitioner alleging an offence punishable under Sections 120B, 468, 420 IPC r/w 5(11) IPC. The petitioner figured as the 2nd accused while Sri D.Raghava Reddy, RPSI, Kurnol, figured as the 1st accused. Six other individuals were also arrayed as accused in respect of the offences in Cr. No. 26 of 2003. No charge sheet has yet been filed. At this stage the charge memo dated 5.8.2003 was framed against the petitioner. The challenge before the A.P. Administration Tribunal urged was on the grounds that (a) initiation and the process of disciplinary proceedings even before conclusion of the prosecution would be prejudicial to the petitioner; (b) that his possible defence in the disciplinary proceedings would be akin to that in the criminal case; (c) that his right to effective defence in the criminal case would be in jeopardy if he is obliged to disclose his defence in the disciplinary proceedings and (d) that the disclosure of his defence in the disciplinary proceedings would offer an advantage to the prosecution and would militate against the concept of fair trial. He also urged that as the charges levelled against him in the criminal case as well as in the departmental inquiry involve grave and complicated questions of fact and law, he would suffer prejudice by the simultaneous conduct of the disciplinary proceedings along side the prosecution. He placed reliance on the Supreme Court decision in ***M. Paul Anthony vs Bharat Gold Mines Ltd. ().***

The charge levelled against the petitioner by the charge memo impugned in the O.A., is that the petitioner while working in the RPS, Kurnool, exhibited gross misconduct and dereliction of duties and indulged in criminal activities of conspiring with the family of the deceased Marenna and with Sri D. Raghava Reddy, RPSI, Kurnool,

in fabricating the inquest report and placing it in the CD file, removing the original inquest report recorded by Mr. M. Ramaiah, the then RPSI, Kurnool, from the CD file and in making the family of the deceased to file a case before the Railway Claims Tribunal on 19.10.2001 to wrongfully gain a sum of Rs. 4 lakhs as compensation for the death of Marenna projecting him as a *bona fide* passenger. The statement of imputations of misconduct accompanying the charge memo dated 5.8.2003 reads as under:

> " Sri V.V. Chalapthi, PC 2413 of Kurnool District worked in Railway PS Kurnool in the year 2001 on deputation basis. On 25.04.2001 Sri P. Ramaiah, RPSI, registered a case in Cr.No. 13/2001 u/s 174 Cr.P.C. with regard to the death of Sri Marenna s/o Sivanna, Gangman, Kurnool, who accidentally fallen while boarding a passenger train on Kurnool platform and died. Sri M. Ramaiah, RPSI who investigated the case recorded the inquest report on 25.04.2001 and it was attested by panch witnesses (1) Jangala Ramudu, (2) Deshami, (3) A. Raju. The said inquest report was in the own hand writing of Sri M. Ramaiah, RPSI. The FIR and the original inquest reportw as sent to the M.R.O., in local tappal book by the RPHC.5 Sri N.A.Rasool. The RPSI Sri M.Ramaiah, who recorded the dinquest report sent a copy to the Medical Officer, once copy to the DSRP, Guntakal, through IRP, Guntakal and one copy was kept in the CD file of RPS, Kurnool. The said RPSI also wrot eCD dated 25.04.2001 in which at the panches column he mentioned the names of Jangala Ramudu, Deshami and A.Raju. The RPSI M.Ramaiah has been transferred from RPStation Kurnool and Sri D.Raghava Reddy took charge of RPS, Kurnool on 12.5.2001. After taking charge of the RPS, Kurnool Sri D. Raghava Reddy, RPSI along with Sri V.V.Chalapathi,,PC 2413 and with the deceased relatives (1) P.Nagamma w/o P.Marenna (deceased) aged 50 years, (2) P.Narasimha @ Narasimhulu age 31 years (s/o deceased), (3) P.Miskinna s/o Marenna age 27 years (s/o deceased) conspired to prefer a claim in the Railway Claims Tribunal, Secunderabad.
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> In pursuance of the conspiracy Sri D.Raghava Reddy, RPSI, Kurnool removed the carbon copy of inquest report which was recorded by Sri M. Ramaiah, the then RPSI from the CD file. Sri D.Raghava Reddy, RPSI instructed the Station Writer Sri Naganna to prepare an another inquest report showing the deceased as a *bonafide* passenger. As for the inquest report recorded by Sri M.Ramaiah, the then RPSI the deceased was not a bonafide passenger. The Station Writer Sri Naganna refused to prepare the forged inquest report. Then Sri D.Raghava Reddy, RPSI choose Sri V.V.Chalapathi, RPC who was working in RPS, Kurnool and he dictated another inquest report showing the deceased was in position of a duty free pass at the time of accident which turns him to be a bonafide passenger and

makes him eligible for compensation from the claims Tribunal. To the dictation of Sri D.Raghava Reddy, RPSI, RPC V.V.Chalapathi recorded the second inquest report. In the newly created inquest report he obtainedthe panch signatures of Jangala Ramudu and Deshami (both attested the inquest report prepared by Investigating Officer Sri M.Ramaiah, the then RPSI) and obtained the signature of R.Poul in the place of 3rd panch witness Addakula Raju. Jangala Ramudu is the own brother-in-law of the deceased. In order to gain wrongfully from the Railway Claims Tribunal the panch witnesses Jangala Ramudu, Deshami and R.Poul conspired with the deceased family and the Sri V.V.Chalapathi, RPC and Sri D.Raghava Reddy, RPSI brought into existence a forged document. The signatures of Sri M.Ramaiah, the then RPSI has been forged and the forged document has been inserted in the CD file in Cr.No. 13/2001 u/s. 174 Cr.P.C. of RPS, Kurnool. Sri D.Raghava Reddy, RPSI issued attested copies of F.I.R. inquest report (forged inquest report) and P.M.E. report to the deceased family on 20.05.2001. The deceased wife and sons met the Advocate P.Jhoney R/o Nellore to file a claim in the Railway Claims Tribunal based on the records of F.I.R., forged inquest report and the P.M.E. report. She prepared a claim for Rs.4,00,000/- as compensation on account of death of P.Marenna and she filed the claim in the Railway Claim Tribunal on 19.10.2001 and it has been number as O.A.A. 301/01. the deceased family members claimed that the deceased was a bonafide passenger travelled on duty free pass and claimed a compensation of Rs.4,00,000/-.

Sri V.V.Chalapathi, RPC has exhibited gross misconduct and dereliction of duty in indulging criminal activities unbecoming the member of the disciplined force like Police Department.

Thus, Sri V.V.Chalapath, PC 2413 of Kurnool district has exhibited lack of integrity, devotion to duty and conduct unbecoming of public servant and thereby contravened Rule 3(1) and 3(2) APCS (Conduct) Rules 1964."

No doubt the factual substratum in Cr. No. 26 of 2003 by the RPS Kurnool is the same as in the departmental proceeding. However as on date even a charge sheet does not appear to have been filed. There is also no invariable principle of law that prohibits conduct of disciplinary proceedings when a criminal case is instituted or is in progress. The standard of proof in prosecution and in departmental enquiry, is distinct. The sanctions of criminal law are substantially towards the deprivation of liberty of an accused when found guilty, whereas in the case of a departmental proceedings the penalties are,

on conclusion of guilt, in the area of deprivation of service benefits including, if circumstances so warrant, a penalty of dismissal from service or the forfeiture of pension wholly or in part.

The departmental proceedings impugned in the O.A. are intended to inquire into the alleged misconduct of the petitioner in the performance of his official functions as a Police Constable on deputation with the Kurnool RPS. The enquiry into this misconduct is on the distinct basis of the petitioner's status as a Government servant who is alleged to have abused his official position and thereby fraudulently caused pecuniary loss to the public exchequer. Even in a departmental enquiry the burden of establishing the charge is on the employer and there is a presumption of innocence. By undergoing the process of departmental enquiry the petitioner suffers no prejudice in the prosecution when launched against him by filing of the charge sheet after a due process of investigation. The conclusions in the departmental enquiry *ipso facto* do not lead a conclusion of guilt in a criminal case. The thrust in a departmental enquiry is on the conduct of the petitioner as a Government servant though the event alleged to constitute the misconduct may be identical to what is alleged or is likely to be alleged in the prosecution.

As is apparent from the charge memo dated 5.8.2003, no complicated questions of law or fact are involved. As has rightly been pointed out by the Tribunal there is potentially a substantial overlapping of facts which lead to allegations in a departmental enquiry initiated in the context of events leading to a prosecution too. Nevertheless no decision including the decision of the Supreme Court in *Paul Anthony* (1 supra) has enunciated a linear principle of law that departmental proceedings are prohibited where a criminal prosecution is in process, on a similar set of facts. There is also no warrant for conceptualising such a principle as it would occasion irreparable damage to public interest. Even an acquittal in criminal case does not *per se* or normally debar the initiation of a departmental enquiry in respect of the same circumstances as had led to the prosecution. This too is a settled principle on established

binding precedential authority.

We find no infirmity either in the application of law, analysis of the facts and circumstances or the conclusions recorded by the Tribunal, warranting interference in this writ petition. The writ petition is dismissed. No order as to costs.

Date: 23.08.2004 ----------

Pvsn J.Chelameswar, J

G.Raghuram, J

To

1. The Deputy Inspector General of Police,

Kurnool Range, Kurnool.

2. The Inquiring Authority/Sub Divisional Police

Officer, Done, Kurnool District.

3. The Presenting Officer/Inspector of Police,

Done, Kurnool District.

4. Government Pleader for Services-I, High Court Buildings, Hyderabad (OUT)

5. Government Pleader for Home, High Court Buildings, Hyderabad

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